



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

CHAN

September 25, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Luis Rosa**  
Tax Registry No. 899778  
40<sup>th</sup> Precinct  
Disciplinary Case No. 2011-5722

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on June 10, 2013 and was charged with the following:

**DISCIPLINARY CASE NO. 2011-5722**

1. Said Police Officer Luis Rosa, while assigned to the 40<sup>th</sup> precinct, on or about and between March 12, 2010 and September 11, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer on several occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of several summonses issued to various individuals.

**P.G. 203-10, Pages 1, Paragraph 5,**

**PROHIBITED CONDUCT  
GENERAL REGULATIONS**

In a Memorandum dated September 11, 2013, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Luis Rosa Guilty of Specification No. 1, in Disciplinary Case No. 2011-5722. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After considering all of the evidence presented, I have determined that the misconduct in this matter warrants the forfeiture of ten (10) vacation days.

Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

September 11, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Luis Rosa  
Tax Registry No. 899778  
40 Precinct  
Disciplinary Case No. 2011-5722  
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The above-named member of the Department appeared before me on June 10, 2013, charged with the following:

1. Said Police Officer Luis Rosa, while assigned to the 40<sup>th</sup> precinct, on or about and between March 12, 2010 and September 11, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer on several occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of several summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Derick Cuebas as a witness and offered into evidence the transcript of Respondent's official Department interview.

Detective Derick Cuebas

Cuebas, a 22-year member of the Department who is assigned to the Internal Affairs Bureau (IAB), testified that between 2010 and 2012 he worked on the investigation into alleged ticket fixing in the Bronx. His primary duty was to review telephonic communications that had been intercepted via court-ordered wiretaps. Police Officer Luis Rodriguez, the PBA delegate at the 40 Precinct, was a target of the investigation and a court order was obtained authorizing the interception of communications he sent and received on his telephone.

On April 21, 2010, Cuebas intercepted five text message exchanges between Rodriguez and Respondent. The first text message was sent by Rodriguez to Respondent. In this message he requested Respondent's assistance in "taking care of" two summonses that had been issued to a motorist by Police Officer Ann Mari Breheny. In a subsequent text message, Respondent texted Rodriguez that, "It's all good, taken care of." The final text message in this exchange was a message from Rodriguez to Respondent in which Rodriguez stated, "Thank you brother."

Cuebas explained that based on his review of numerous telephonic communications in which a member of the service (MOS) had requested the assistance of another MOS to prevent the processing or adjudication of a summons, Respondent's final

text message to Rodriguez was a common way that a MOS would inform another MOS that a summons would not be processed or adjudicated.

On cross-examination, Cuebas confirmed that the only information he possessed regarding the summons that Rodriguez had issued to Respondent's friend Person A was what Respondent had stated at his official Department interview. Cuebas did not obtain the summons nor did he ascertain when the summons was issued to Person A or whether the summons had been adjudicated. He had no recollection that he ever saw the summons.

Cuebas was not present at Respondent's official Department interview and he had no recollection of speaking with any of the investigators who were present at the interview about the Person A summons. Cuebas agreed that Respondent had asserted at his official Department interview that he had told Rodriguez he did not want the summons "taken care of" after Respondent learned from Rodriguez that Person A had been disrespectful to him. Respondent also stated at his official Department interview that Rodriguez had told him he would not be "taking care of" the summons. Cuebas did not recall seeing any intercepted communications between Respondent and Rodriguez with respect to the Person A summons and Cuebas agreed that his testimony about the Person A summons was based solely on the information Respondent had volunteered at his interview. Cuebas never interviewed Rodriguez.

Cuebas could not recall whether he ever saw either of the two summonses that had been issued by Breheny. He explained that in ticket-fixing cases a union delegate typically contacted either the issuing officer or another officer in the command about having summonses "taken care of." Although Cuebas never personally interviewed



Breheny, he was told that when she was interviewed she had denied ever being approached or contacted by any member of the service with respect to the two summonses at issue and that she had stated that she always submits her summonses for processing. Cuebas did not uncover any information that was inconsistent with her statement. He could not recall whether he had checked Breheny's summons book for missing summonses or whether he had made an attempt to locate the two summonses. He did not know whether the two summonses had been adjudicated. To his knowledge, no disciplinary action was ever instituted against Breheny with respect to the two summonses at issue.

Cuebas did not know if Respondent was on duty on April 21, 2010. He conceded that Respondent could have been lying to Rodriguez when he texted him that the two summonses had been "taken care of." After conferring with his supervisor, Cuebas recommended that this matter be handled as a Schedule B Command Discipline.

On redirect examination, Cuebas explained that there were other cases in which he was unable to locate summonses that were allegedly fixed but found evidence that the summonses had in fact been "taken care of."

It did not strike Cuebas as unusual that there was no intercepted contact between Respondent and Breheny about the summonses. He explained that this was not uncommon as the ticket-fixing MOS could have simply removed summonses from the summons box and destroyed them and that sometimes the officer who had issued the summonses was not even aware that the summonses had been removed.

Respondent's Official Department Interview

At his official Department interview, which was conducted on September 12, 2011 [Department's Exhibit 1], when Respondent's interviewers initially confronted him with the text messages that he exchanged with Rodriguez on April 21, 2010, his interviewers inaccurately asserted that he had texted Rodriguez to request his assistance in "taking care of" two summonses. Later in the interview, after they realized their mistake, his interviewers read him the text messages that he exchanged with Rodriguez on April 21, 2010, in which Rodriguez requested Respondent's assistance in "taking care of" two summonses that had been issued by Breheny. When one of Respondent's interviewers asked him how he knew Breheny, he stated that, "I know her from Yankee Stadium" and he confirmed that he knew her well. When the interviewer asked him, "So what happened with this?" he responded, "I asked for the professional courtesy..." When he was then asked, "So you reached out to Ann Mari Breheny?" he answered, "I would have had to. Yes, I imagine so." He then stated that he had no specific recollection of having reached out to Breheny. This interviewer then told Respondent that in the last text message that Respondent sent to Rodriguez on April 21, 2010, Respondent had stated, "It's all good." The interviewer then asked him, "And that means what?" He answered, "It's courtesy extended." When Respondent's interviewers later asked him, "Is there anything you would like to add or clarify?" Respondent answered, "That's it."

Respondent acknowledged that on another occasion within the past 18 months he had contacted Rodriguez about a summons that Rodriguez had personally issued to a female friend of Respondent. The friend had contacted him about the summons to see if

he could help her regarding the summons. He told her that he would speak to Rodriguez but that he could not “guarantee anything.” When Rodriguez told him about her attitude, he called her and told her, “I’m sorry, can’t do anything for you.” Respondent stated that “nothing happened” regarding the summons and that he had refused to help his friend because “I’m not getting disgraced for anybody.”

#### Respondent’s Case

Respondent testified in his own behalf.

#### Respondent

Respondent, a 22-year member of the Department, has been assigned to the 40 Precinct his entire career. Respondent confirmed that on April 21, 2010, he received a text message from Rodriguez, who was his union delegate at the time, in which Rodriguez asked him to “take care of” two summonses. Respondent asked Rodriguez to provide him with the summons numbers and the issuing officer’s name. Rodriguez informed him that the issuing officer was Breheny. Although Breheny was not assigned to the 40 Precinct, Respondent knew her and considered her a friend. Respondent was aware that Breheny was assigned to the Yankee Stadium detail. Respondent was also aware that officers assigned to the Yankee Stadium detail turned their summonses in at a Department substation located inside Yankee Stadium. Respondent knew this because he had sometimes been assigned to the Yankee Stadium detail, but he was not working there on April 21, 2010 when he received the text message from Rodriguez.

Respondent testified that although he never contacted Breheny regarding the two summonses or took any other action to prevent the processing and adjudication of these summonses, he lied to Rodriguez by sending Rodriguez a text message which falsely stated that, "It's all good, taken care of." He explained that he had lied to Rodriguez, "To get him off my back" because "sometimes" other MOS "put you in a compromising position and I didn't want to be put in that place." Respondent never saw the summonses that Breheny had issued and he never took them out of a box. He testified that he did not even know where Breheny would have placed the summonses for processing and adjudication.

Respondent recalled that there were four or five interrogators asking him questions at his official Department interview and they asked him numerous times whether or not he had spoken with Breheny about the summonses that Breheny had issued. Respondent recalled that although he initially stated at the interview that he did not speak to Breheny, toward the end of the interview he had stated that he must have spoken with her. He explained that his statement about speaking with Breheny was not accurate and that he had "caved in to the same questioning." He described this as bad judgment on his part.

Respondent testified that at some point in time prior to his official Department interview, he was contacted by a female friend named Person A who he has been friends with for over 22 years. Person A asked him if he could help her regarding a summons that had been issued to her by Rodriguez. Respondent then contacted Rodriguez to ask about the summons that he had issued to Person A. Rodriguez told Respondent that he had issued the summons after Person A disobeyed an order to move and became disrespectful.



Respondent never asked Rodriguez to "take care of" this summons. He did not know when his conversation with Rodriguez about the summons took place but he believed it occurred more than 18 months prior to his official Department interview. He did not know if Person A ever paid the summons.

On cross-examination, Respondent confirmed that he and Rodriguez have been friends for a long time. Respondent has known Breheny for five or six years, but Rodriguez did not know about their friendship. Rodriguez did not tell Respondent where Breheny had issued the summonses. During the course of his career, Respondent has participated in three or four official Department interviews. He agreed that at no point during his official Department interview did he tell his interviewers that the reason that he had he had texted Rodriguez that, "It's all good, taken care of," was just to get Rodriguez off his back. He agreed that at his official Department interview he had told his interviewers that his text message "It's all taken care of" meant that "courtesy had been extended" and that the summonses issued by Breheny had been "taken care of" as Rodriguez had requested.

Respondent testified that when he contacted Rodriguez about the Person A summons it was for the purpose of finding out the circumstances surrounding the issuance of the summons. He raised the subject of the Person A summons in his official Department interview after he was asked whether he had requested assistance in taking care of a summons within the past 18 months. He never saw the summons that Rodriguez issued to Person A but, based on what Person A had told him, he believed that it was for double parking.

FINDINGS AND ANALYSIS

It is charged that Respondent, on and between March 12, 2010 and September 11, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on several occasions he assisted and/or requested the assistance of other MOS to prevent the processing and adjudication of several summonses issued to various individuals.

Respondent does not dispute that Rodriguez requested his assistance to prevent the processing and adjudication of two summonses that had been issued by Breheny ("the Breheny summonses"). Respondent also does not dispute that sometime during the 18-month period prior to the date of his official Department interview, he called Rodriguez regarding a summons that Rodriguez had personally issued to a female friend of Respondent whose name is Person A ("the Person A summons"). I will analyze the Breheny summonses and the Person A summons separately.

The Breheny Summonses

Respondent does not dispute Cuebas' testimony that on April 21, 2010, five text messages were exchanged between Rodriguez and Respondent regarding the Breheny summonses and that the final text message in this exchange was a message from Respondent to Rodriguez in which Respondent told Rodriguez, "It's all good, taken care of." This statement by Respondent constitutes an admission that he had taken action to prevent either the processing or the adjudication of the Breheny summonses.

At this trial, Respondent attempted to refute his admission by asserting that his statement of assurance to Rodriguez that he had "taken care of" the Breheny summonses

as Rodriguez had requested was actually a lie that he had told Rodriguez “to get him off my back.” However, Respondent never asserted at his official Department interview that his statement to Rodriguez that, “It’s all good, taken care of,” was actually a lie. On the contrary, when he was asked at his official Department interview what had happened regarding the Breheny summonses, he responded, “I asked for the professional courtesy...” When he was then asked, “So you reached out to Ann Mari Breheny?” he answered, “I would have had to. Yes, I imagine so.” Also, when he was asked what he had meant when he typed “it’s all good” in the last text that he sent to Rodriguez on April 21, 2010, Respondent answered, “It’s courtesy extended.” Finally, when Respondent’s interrogators asked him at the end of the interview, “Is there anything you would like to add or clarify?” Respondent answered, “That’s it.”

Since at his official Department interview Respondent was being asked to recall text messages that he and Rodriguez had exchanged nearly 17 months prior to the interview, it is understandable that his memory of the content of these text messages might be hazy. It is less understandable, and therefore less believable, that having had his recollection refreshed by being read these text messages that he would not be able to recall that he had lied to his union delegate about a matter that was clearly important enough to the delegate that he had reached out to Respondent about it more than once.

I find that if Respondent had actually lied to Rodriguez as he claimed in his testimony at this trial, it is likely that he would have asserted this claim at his official Department interview. Yet the transcript of Respondent’s official Department interview shows that although he had ample opportunity to assert this claim, he did not do so.



Moreover, Respondent knew that based on his representation to Rodriguez that he had taken care of the two summonses, Rodriguez would be assuring the recipient of the summonses that he or she had no need to fear that they would ever be adjudicated. Thus, Respondent's claim that he lied to Rodriguez about taking care of the summonses implicitly asserts that Respondent was not concerned about what his union delegate's reaction would be if Rodriguez suffered the embarrassment of receiving a call from the recipient of the summonses complaining that contrary to Rodriguez' assurances the two summonses had been adjudicated. I find that it is unlikely that Respondent would have double-crossed his union delegate by not even attempting to prevent the processing or adjudication of the Breheny summonses, especially since Respondent considered Breheny to be a friend.

Finally, Respondent's argument that because Breheny denied being contacted by anyone about the summonses they could not have been taken care of by Respondent, ignores Cuebas' testimony that Respondent had other options by which he could have prevented the processing or adjudication of these summonses and that sometimes the issuing officer is unaware that summonses have not been processed or adjudicated.

Based on the above analysis, I find Respondent Guilty of assisting Rodriguez in preventing the processing or adjudication of two summonses issued by Breheny.

#### The Person A Summons

The only proof offered by the Department regarding this summons was the statements Respondent made at his official Department interview regarding this summons; a summons that his interviewers were unaware of prior to the interview.



At his official Department interview, Respondent stated that when he learned from Rodriguez that Person A had been disrespectful to Rodriguez, he decided not to ask Rodriguez to prevent the processing or adjudication of the summons. Although Respondent's denial that he had requested that Rodriguez do anything regarding the Person A summons could have been refuted if the Department had shown that this summons was never processed or adjudicated, since Cuebas did not ascertain whether the summons was processed or adjudicated, the Department's proof that Respondent requested that Rodriguez take care of this summons is inadequate. Thus, I find that the Department did not meet its burden of proof regarding the Person A summons.

As a result of this finding, there is no need to make a finding regarding Respondent's claim that he was not served with Charges and Specifications regarding the Person A summons within the applicable 18-month statute of limitations.

In conclusion, Respondent is found Guilty of assisting Rodriguez to prevent the processing and adjudication of two summonses issued by Breheny.

#### PENALTY

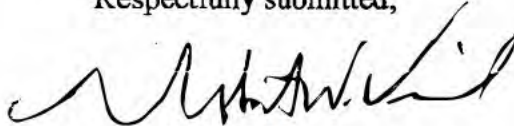
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on April 30, 1991. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has no prior disciplinary record. However, even in cases where a Respondent with no prior disciplinary record has pleaded guilty to assisting or requesting

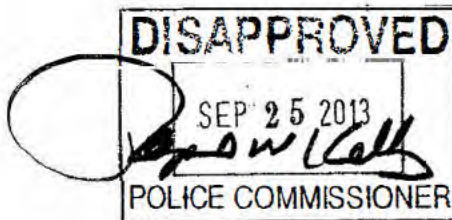
the assistance of another MOS to prevent the processing or adjudication of two summonses, the Police Commissioner has consistently imposed a penalty of five suspension days to be served, forfeit of 25 vacation days, and one year on dismissal probation. See Case Nos. 2011-5715 (May 8, 2013) and 2011-5911 (May 23, 2013).

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that Respondent be suspended for five days and that he forfeit 25 vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner – Trial

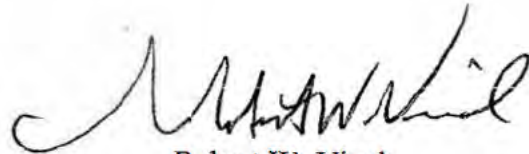


POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER LUIS ROSA  
TAX REGISTRY NO. 899778  
DISCIPLINARY CASE NO. 2011-5722

The Respondent received an overall rating of 4.0 on his 2012 performance evaluation, 4.0 on his 2011 evaluation, and 4.0 on his 2010 evaluation. He has been awarded three Excellent Police Duty medals. He has no monitoring records. [REDACTED]  
[REDACTED] He has no prior formal disciplinary record.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials